

Application No. 10/055743
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Amendment
Attorney Docket No. S63.2B-9964-US01

Remarks

Claim Rejections

35 U.S.C. §112

Claims 1, 5-13 and 23-25 have been rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action asserts that in the last two lines of both claims 1 and 23, the phrase "of said" appears too many times.

Applicants have amended claims 1 and 23. Claims 5-13 depend from claim 1 and claims 24-25 depend from claim 23.

Applicants respectfully request withdrawal of the rejection of claims 1, 5-13 and 23-25 under 35 U.S.C. §112, second paragraph.

Claim 26 has been rejected under 35 U.S.C. §112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. The Office Action asserts that "[e]vidence that claim 26 fail(s) to correspond in scope with that which Applicant(s) regard as the invention can be found in the last response, at pages 7-8. In that paper, Applicant has stated that the tie layer includes a polymeric blend that must be melt-processable, and this statement indicates that the invention is different from what is defined in claim 26 because it does not require that the blend be melt processable."

Applicants disagree.

The original claims as filed are part of the original disclosure. None of the original claims as filed recited the term "melt-processable". However, the polymers disclosed in the specification are melt processible and therefore there is support in the specification to employ such a term.

Furthermore, Applicants submit that there was no statement in the last response indicating that the polymeric blend *must* be melt-processible, but rather that the polymers disclosed for use in the application were melt processible.

Therefore, claim 26 as filed is commensurate in scope with the original disclosure.

Applicants have amended this claim as requested in the Office Action to expedite prosecution of this application, and because the specific polymers recited in claim 26 are in fact melt-processible.

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Applicants respectfully request withdrawal of the rejection of claim 26 under 35 U.S.C. §112, second paragraph.

Double Patenting

Claims 1, 5-10, 13 and 23-26 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 6, 10, 15, 16 and 20 of copending Application No. 10/764405 (US 2004/158256A1).

Applicants have included herewith, a terminal disclaimer which obviates the obviousness-type double patenting rejection.

Submission of the terminal disclaimer should not be taken in any way as an admission of obviousness of the invention. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 20 USPQ2d 1392 (Fed. Cir. 1991); *Golight Inc. v. Wal-Mart Stores Inc.*, 69 USPQ2d 1481 (Fed. Cir. 2004)

Applicants respectfully request withdrawal of the rejection of claims 1, 5-10, 13 and 23-26 under the judicially created doctrine of obviousness-type double patenting.

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CONCLUSION

Applicants have addressed each of the issues presented in the Office Action. Based on the foregoing, Applicants respectfully request reconsideration and an early allowance of the claims as presented. Should any issues remain, the attorney of record may be reached at (952)563-3011 to expedite prosecution of this application.

Respectfully submitted,

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